IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 714 OF 2005

1. Vishwas Krishna Holkar & ors. ... Appellants

V/s

Sou. Najira Babumiya Sayyed & ors. ... Respondents

Mr. P.M. Pradhan for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 11TH AUGUST, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 19.11.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Diovn., Miraj, dated 30.7.2001, decreeing the suit of the plaintiffs for removal of encroachment and recovery of possession of encroached portion of the property and perpetual injunction in respect of the open flat of land situated at Miraj.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit against the defendants alleging that the defendants had encroached upon their property and, therefore, for removal of encroachment and possession of the encroached property and also for perpetual injunction.

Defendants contested the suit on various grounds inter-alia submitting that the allegations made by the plaintiffs are not correct and the property in fact was transferred to him under an agreement and, therefore, also sought protection under Sec. 53-A of the Transfer of Property Act and, as such, the suit was sought to be dismissed with no order as to costs.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs have proved title and possession of the suit premises and further proved that defendants had committed encroachment over the portion of the suit premises. It was also held that the defendants had failed to prove that they were in possession and enjoyment of the disputed portion of the property in part performance of the contract and as such the suit came to be decreed.

The appeal was carried to the District Court, Sangli. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the evidence on record was sufficient to show that the reasonings adopted and findings recorded by the Trial Judge were legal and proper and hence dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal and the issues involved are issues of fact based on oral as well as documentary evidence and are seen to be adjudicated in proper manner by both the Courts below after assessing the available evidence on record.

6. The learned counsel for the appellants submitted that the documentary evidence, especially the letter of consent Exh.50 was proof of transfer of property in possession of the defendants. However, both the Courts below have rightly held that contents thereof were not sufficient to show that possession of the property was in fact handed over and it was to be transferred. So far as the aspect of the encroachment is concerned, the Architect was appointed by the plaintiffs whose report

and map were brought on record. The said Architect was also examined as a witness on various grounds together with the fact that he was engaged by the plaintiffs and, therefore, it is alleged that he was a biased witness. However, the fact that merely because he was engaged by the plaintiffs to draw a map and measure the property, would not be sufficient to attribute the element of bias to him in favour of the plaintiffs and, therefore, especially in absence of circumstances to the contrary, both the Courts below have rightly relied upon the map and the report filed by the said expert witness in order to hold that there was encroachment over the suit property by the defendants and hence the suit came to be decreed.

7. Time and again, the Apex Court has held that the concurrent findings of facts, howsoever erroneous, cannot be interfered with by the High Court in second appeal under Sec.100 of the C.P.C. It is especially when the lower appellate Court, being the last Court of fact, has assessed the entire evidence in proper perspective and, therefore, I hold that no interference is called for in this regard and, as such, the appeal deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application also stands dismissed with no order as to costs.

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